

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TiVo Inc., a Delaware corporation,

Plaintiff,

v.

1. EchoStar Communications Corporation, a
Nevada corporation; 2. EchoStar DBS
Corporation, a Colorado corporation; 3. EchoStar
Technologies Corporation, a Texas corporation;
and 4. Echosphere Limited Liability Company, a
Colorado limited liability company,

Defendants.

No. 2-04cv01 DF
(Judge Folsom)

**DECLARATION OF ROBERT M.
HARKINS IN SUPPORT OF
DEFENDANTS' CLAIM
CONSTRUCTION**

I, Robert M. Harkins, declare:

1. I am a member of the bar of the State of California, and I am admitted before this Court pro hac vice. I am an associate with the law firm of Morrison & Foerster LLP, counsel of record for Defendants in the above-captioned action. Except where otherwise stated, I have personal knowledge of the facts set forth herein and, if called as a witness, I could competently testify thereto.

2. Attached as Exhibit A is a true and correct copy of United States Patent No. 6,233,389 entitled, "Multimedia Time Warping System," issued May 15, 2001.

3. Attached as Exhibit B is a true and correct copy of relevant excerpts from the Prosecution History File of United States Patent Application No. 09/126,071, filed July 30, 1998.

4. Attached as Exhibit C is a true and correct copy of the relevant excerpts of dictionary definition terms from *The Authoritative Dictionary of IEEE Standards Terms* (IEEE Press, 7th ed., 2000).

5. Attached as Exhibit D is a true and correct copy of the relevant excerpts of dictionary definition terms from *The American Heritage Dictionary of the English Language* (Houghton Mifflin Co., 4th ed. 2000).

6. Attached as Exhibit E is a true and correct copy of the relevant webpage printout of dictionary definition terms from *Oxford English Dictionary Online* (2005) available at http://dictionary.oed.com/cgi/entry/00318386?single=1&query_type=word&queryword=multitude&first=1&max_to_show=10 (last modified March 2003).

7. Attached as Exhibit F is a true and correct copy of the relevant excerpts of dictionary definition terms from *Telecommunications: Glossary of Telecommunications Terms, Federal Standard 1037C* (National Communications System, Technology and Standards Division, 1996).

8. Attached as Exhibit G is a true and correct copy of the relevant excerpts of dictionary definition terms from *Newton's Telecom Dictionary* (Flatiron Pub., 8th ed. 1994).

9. Attached as Exhibit H is a true and correct copy of the relevant excerpts from the *Manual of Patent Examining Procedure*, (West Group, 8th ed. 2001).

10. Attached as Exhibit I is a true and correct copy of the relevant webpage printout of dictionary definition terms from *Free On-Line Dictionary of Computing* (2005) available at <http://foldoc.doc.ic.ac.uk/foldoc/foldoc.cgi?object-oriented+programming> (last modified October 11, 2001).

11. Attached as Exhibit J is a true and correct copy of the relevant webpage printout of dictionary definition terms from *Webopedia* (2005) available at http://www.webopedia.com/TERM/O/object_oriented_programming_OOP.html (last modified January 7, 2003).

12. Attached as Exhibit K is a true and correct copy of the relevant webpage printout of dictionary definition terms from *Wikipedia* (2005) available at http://en.wikipedia.org/wiki/Object-oriented_programming (last modified April 1, 2005).

13. Attached as Exhibit L is a true and correct copy of the relevant webpage printout of dictionary definition terms from *WordNet* (2005) available at <http://wordnet.princeton.edu/cgi-bin/webwn 2.0?stage=1&word=buffer> (last modified 2005).

14. Attached as Exhibit M is a true and correct copy of the relevant webpage printout of dictionary definition terms from *SearchOracle.com* (2005) available at http://searchoracle.techtarget.com/sDefinition/0,290660,sid41_gci519447,00.html (last modified April 2, 2005).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of April 2005, at San Francisco, California.

/s/ Robert M. Harkins

Robert M. Harkins

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document is being filed electronically and therefore served pursuant to the Court's electronic service procedures on the following counsel of record on the 11th day of April 2005. Additionally, Defendants are sending this document directly to the following counsel of record via e-mail transmission and United States Mail:

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